

**BEFORE THE
COMMISSION ON LANDLORD TENANT AFFAIRS
FOR MONTGOMERY COUNTY, MARYLAND**

In the matter of:

Linda Lyon

Complainant

V.

Kerry J. Hampton and
Hampton Enterprises, LLC

Respondent

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Case No. 31386

Rental Facility: 13345 Whitechurch Circle, Germantown, MD 20874 (License #35265)

DECISION AND ORDER

The above captioned case having come before the Commission on Landlord-Tenant Affairs for Montgomery County, Maryland ("Commission"), pursuant to Sections 29-10, 29-14, 29-41, and 29-44 of the Montgomery County Code, 2001, as amended, and the Commission having considered the testimony and evidence of record, it is therefore, this 8th day of June 2010, found, determined, and ordered, as follows:

BACKGROUND

On January 22, 2010, Linda Lyon ("Complainant"), former tenant at 13345 Whitechurch Circle, Germantown, MD ("Property"), a licensed rental property in Montgomery County, Maryland, filed a complaint with the Office of Landlord-Tenant Affairs within the Department of Housing and Community Affairs, ("Department") in which she alleged that her former landlord, Kerry J. Hampton and Hampton Enterprises, LLC, owner of the Property ("Respondent"): (1) without a reasonable basis, failed to refund any portion of her \$1,000.00 security deposit plus accrued interest after the termination of her tenancy, in violation of Sections 8-203 (e)(1) and (f)(1) of the Maryland Code (1954, 2003 Repl. Vol., 2007 Suppl.), Real Property Article, ("Real Property Article"); (2) failed to send her an itemized list of damages, together with a statement of the costs actually incurred to repair those damages, within the 45 days after the termination of her tenancy, in violation of Section 8-203 (g)(1) of the Real Property Article, and therefore, pursuant to Section 8-203(g)(2), the Respondent has forfeited the right to withhold any portion of her security deposit plus accrued interest for damages; and (3) failed to credit her security deposit with accrued interest as required by Section 8-203(e)(1) of the Real Property Article.

The Complainant asserted that she did not damage the Property in excess of ordinary wear and tear during her tenancy, and therefore, the Respondent had no reasonable basis to withhold any portion of her security deposit plus accrued interest.

The Respondent contended that: (1) the Complainant damaged the Property in excess of ordinary wear and tear during her tenancy; and, (2) he incurred actual expenses to repair those damages.

The Complainant is seeking an Order from the Commission for the Respondent to refund her entire \$1,000.00 security deposit plus 8 months accrued interest, in the amount of \$15.00, plus a penalty of up to three times that amount based on the Respondent's unreasonable withholding of her entire security deposit plus interest.

After determining that the complaint was not susceptible to conciliation, the Department referred this case to the Commission for its review, and on April 6, 2010, the Commission voted to hold a public hearing on May 26, 2010. The public hearing in the matter of Linda Lyon v. Kerry J. Hampton and Hampton Enterprises LLC., relative to Case No. 31386, commenced on May 26, 2010, and concluded on that date.

The record reflects that the Complainant and the Respondent were given proper notice of the hearing date and time. Present and sworn at the hearing and presenting evidence were the Complainant, Linda Lyon, the Respondent, Kerry J. Hampton, and Juan Orellana, Contractor, subpoenaed as a witness, at the Respondent's request.

Without objection, the Commission entered into the record the case file compiled by the Department, identified as Commission's Exhibit No. 1. The Commission also entered into evidence the following exhibits offered by the Respondent: (1) an HOC Housing Quality Standard (HQS) inspection report, dated February 9, 2009, identified as Respondent's Exhibit No. 1; (2) a failed inspection report from HOC, dated July 30, 2009, identified as Respondent's Exhibit No. 2; (3) a temporary Peace Order filed in Montgomery County District Court, dated July 29, 2009, identified as Respondent's Exhibit No. 3; (4) a copy of a check tendered to Juan Orellana, dated November 12, 2009, identified as Respondent's Exhibit No. 4; (5) a Home Depot Invoice # 2560-291486, for the purchase of cabinets, identified as Respondent's Exhibit No. 5; and, (6) an HOC-HQS inspection report, dated November 19, 2009, identified as Respondent's Exhibit No. 6. The Commission also entered into evidence the following exhibits offered by the Complainant: (1) an inspection report performed by the Department's Housing Code Inspector Jason White, dated June 4, 2009, identified as Complainant's Exhibit No. 1; and, (2) an HVAC service order invoice No.66222 provided by Sunn Corporation, dated May 30, 2009, identified as Complainant's Exhibit No. 2.

FINDINGS OF FACT

Based on the testimony and evidence of record, the Commission makes the following Findings of Fact:

1. On February 11, 2009, the Respondent and the Complainant signed a two year lease agreement (“Lease”) for the rental of the Property, which commenced on March 1, 2009, and was due to expire on February 28, 2011, for a monthly rent of \$1,585.00;
2. Paragraph 3 of the Lease, entitled “Security Deposit,” states that the Complainant paid the Respondent a security deposit in the amount of \$1,600.00;
3. The Commission finds credible the Respondent’s testimony that he only received \$1,000.00 for the security deposit;
4. During her entire tenancy, the Complainant was a participant in the Housing Opportunity Commission’s (“HOC”) Housing Choice Voucher Program, and HOC paid all of her rent for the entire tenancy;
5. On September 3, 2009, the Complainant provided HOC with a Notice of Intent to Vacate the Property by October 3, 2009, which was not signed by the Respondent;
6. The Complainant did not vacate the Property pursuant to the September 3, 2009, Notice to Vacate;
7. On September 29, 2009, HOC conducted an HQS inspection at the Property; and on October 1, 2009, notified the Complainant that the unit she was occupying failed to pass inspection; however, the rent was not abated;
8. On September 30, 2009, the Respondent provided the Complainant with a Notice to Vacate/Breach of Lease notice, to vacate the Property by October 14, 2009;
9. The Commission finds that the Complainant vacated the Property on October 31, 2009, and HOC paid rent in full through that date;
10. The Commission finds that on November 2, 2009, the Complainant returned the keys for the Property to the HOC Customer Service Center located in Gaithersburg, MD. The Respondent picked-up the keys for the Property on November 5, 2009;
11. The Commission finds credible the Complainant’s testimony that on December 7, 2009, she advised the Respondent via certified mail (Page 2, Commission Exhibit #1) of her new forwarding address-11006 Veirs Mill Road, #196, Silver Spring, MD 20906;
12. The Commission finds credible the Respondent’s testimony that on December 9, 2009, he received notification of the Complainant’s new forwarding address (Pages 58 and 59 of the Public Hearing transcripts);
13. The Commission finds that the Complainant did not pay the final WSSC bill relative to the Property;

14. The Commission finds credible the testimony of Juan Orellana, Contractor, that he performed work at the Property after the Complainant vacated. However, the contractor did not provide any probative testimony in support of the Respondent's position that the Complainant damaged the Property in excess of ordinary wear and tear;

15. The Commission does not find credible the Respondent's testimony that he sent to the Complainant, at her last known address, within 45 days after the termination of her tenancy, an itemized list of damages being claimed against her security deposit together with a statement of the costs actually incurred to repair that damage;

16. The Commission finds that the Respondent failed to credit the Complainant's security deposit with the correct amount of simple interest which had accrued on her \$1,000.00 security deposit from the commencement of her tenancy, March 1, 2009, until the termination of her tenancy, October 31, 2009.

CONCLUSIONS OF LAW

Accordingly, based upon a fair consideration of the testimony and evidence contained in the record, the Commission on Landlord-Tenant Affairs concludes:

1. Pursuant to Section 8-203(f)(1)(i) of the Real Property Article, "The security deposit, or any portion thereof, may be withheld for unpaid rent, damage due to breach of lease or for damage by the tenant or the tenant's family, agents, employees, guests or invitees in excess of ordinary wear and tear to the leased premises, common areas, major appliances, and furnishings owned by the landlord."

Further, Section 8-203(g)(1) and (2) of the Real Property Article provides that "(1) If any portion of the security deposit is withheld, the landlord shall present by first-class mail directed to the last known address of the tenant, within 45 days after the termination of the tenancy, a written list of the damages claimed under subsection (f)(1) of this section together with a statement of the cost actually incurred; and, (2) If the landlord fails to comply with this requirement, the landlord forfeits the right to withhold any part of the security deposit for damages."

The Commission concludes that the Respondent failed to send such an itemized list to the Complainant within 45 days after the termination of her tenancy, which constitutes a violation of Section 8-203(g)(1) of the Real Property Article, and therefore, pursuant to Section 8-203(g)(2), the Respondent has forfeited his right to withhold any portion of the Complainant's security deposit for damages.

2. The Commission concludes that the Respondent's failure to pay the Complainant interest which had accrued on her security deposit constitutes a violation of Section 8-203 (e)(1) of the Real Property Article, and has created a defective tenancy.

3. The Commission concludes that the payment of the WSSC bill relative to the Property, in the amount of \$294.50, is the Complainant's responsibility; however, since the

Respondent failed to send the itemized list of damages within 45 days as stated in Conclusions of Law-1., above, the right to deduct this amount has been forfeited.

4. The Commission concludes that the Complainant's tenancy ended on October 31, 2009, and that she is not responsible for payment of any rent after that date.

5. The Commission concludes that the Respondent's failure to handle and dispose of the Complainant's security deposit (\$1,000.00) plus 1.5% accrued interest (\$15.00) in accordance with the requirements of the applicable provisions of Section 8-203, "Security deposits," and Section 8-203.1, "Security Deposit Receipt" of the Real Property Article, has caused a defective tenancy.

6. Although the Commission concludes that the failure by the Respondent to refund any portion of the Complainant's security deposit plus accrued interest was unreasonable and constitutes a violation of Section 8-203 (e)(4) of the Real Property Article, to award a penalty, as requested by the Complainant, pursuant to Section 29-47(b)(3) of the County Code, the Commission must consider the egregiousness of the Landlord's conduct in wrongfully withholding all or part of the Complainant's security deposit and whether or not the Landlord acted in bad faith or has a prior history of wrongful withholding of a security deposit. Based on the evidence, the Commission concludes that the Respondent's conduct did not rise to the level of bad faith or egregiousness necessary to award a penalty, and therefore, Complainant's request for such an award is denied.

ORDER

In view of the foregoing, the Commission on Landlord-Tenant Affairs hereby orders that the Respondent must pay the Complainant **\$1,015.00**, which sum represents the Complainant's security deposit (\$1,000.00) plus accrued interest (\$15.00).

Commissioner Laura Murray, Commissioner Jan Patterson, and Commissioner Deanna Stewart, Panel Chairperson, concurred in the foregoing decision unanimously.

To comply with this Order, Respondent, Kerry J. Hampton and Hampton Enterprises, LLC, must forward to the Office of Landlord-Tenant Affairs, 100 Maryland Avenue, 4th Floor, Rockville, MD 20850, within thirty (30) calendar days of the date of this Decision and Order, a check, made payable to Linda Lyon, in the amount of \$1,015.00.

The Respondent, Kerry J. Hampton and Hampton Enterprises, LLC, is hereby notified that Section 29-48 of the County Code declares that failure to comply with this Decision and Order is punishable by a \$500.00 civil fine Class A violation as set forth in Section 1-19 of the County Code. This civil fine may, at the discretion of the Commission, be imposed on a daily basis until there is compliance with this Decision and Order.

In addition to the issuance of Class A civil citations and civil fines of \$500.00 each, should the Commission determine that the Respondent has not, within thirty (30) calendar days of the date of this Decision and Order, made a bona fide effort to comply with the terms of this

Decision and Order, it may also refer the matter to the Office of the County Attorney for additional legal enforcement.

Any party aggrieved by this action of the Commission may file an administrative appeal to the Circuit Court for Montgomery County, Maryland within thirty (30) days from the date of this Decision and Order, pursuant to the Maryland Rules governing administrative appeals. Be advised that pursuant to Section 29-49 of the County Code, should the Respondent choose to appeal the Commission's Order, he must post a bond with the Circuit Court in the amount of the award (\$1,015.00) if a stay of enforcement of this Order is sought.

Deanna Stewart, Panel Chairperson
Commission on Landlord-Tenant Affairs

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